Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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The United States Telecom Association (USTA)[1] submits its reply comments through the undersigned to the Federal Communications Commission (FCC or Commission) in response to certain comments filed in the above-referenced proceeding.

INTRODUCTION AND SUMMARY

Universal service is a critical resource for carriers serving high cost areas across the country and the current system of providing support to carriers serving high cost areas works well. Despite this, the Commission has asked the Federal-State Joint Board on Universal Service (Joint Board) to provide its recommendations on the harmonization of the rural and non-rural high cost support mechanisms. USTA continues to advocate that no changes are needed to the current system of high cost support, with the exception of a limited number of problem areas, particularly the "parent trap" rule. USTA opposes any change to the definition of a rural telephone company, the consolidation of study areas, and the adoption of forward looking economic costs.

[1] USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

DISCUSSION

I. Universal Service Support Provided To ILECs Serving High Cost Areas Is Not Excessive, But Is Critical For Providing Telecommunications Services At Reasonable Rates.

CTIA claims in its comments that "excessive universal service subsidies . . . distort markets by sending the wrong signals for investment and competitive entry."[2] CTIA later maintains that the "FCC's embedded cost-based high-cost universal service mechanisms – high-cost loop support, local switching support, and interstate common line support – create incentives and opportunities for carriers to have higher embedded costs to receive more support."[3] Although CTIA recognizes that "high-cost universal service subsidies continue to increase,"[4] it inaccurately attributes the source of the increase, arguing that "the vast majority of growth in the high-cost fund is the result of increased support for incumbent LECs."[5]

USTA maintains that universal service support provided to incumbent local exchange carriers (ILECs) serving high cost areas is not excessive, but is critical for providing telecommunications services at reasonable rates. In its comments filed in the proceeding regarding designation of eligible telecommunications carriers (ETCs),[6] USTA noted that "[w]hen a carrier is designated as an eligible telecommunications carrier for receipt of high-cost support from the Universal Service Fund (USF or Fund), it receives such support because the area it serves is prohibitively expensive and consumers will not or cannot pay the market-based price

[2] CTIA Comments at 2-3.

[3] *Id*. at 7.

[4] *Id*.

[5] *Id*. at 3.

[6] *See Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket 96-45, FCC 04-127 (rel. June 8, 2004) (ETC Designation NPRM); *see also Federal-State Joint Board on Universal Service*, Comments of the United States Telecom Association, CC Docket No. 96-45 (filed Aug. 6, 2004) (USTA ETC Designation Comments).

for the full range of telecommunications services that are reasonably comparable to those available competitively in urban parts of the country."[7] In other words, high cost areas are dysfunctional markets, meaning that carriers operating in those areas require support in order to ensure that consumers there have access to services that are comparable to those in urban areas and in order to keep rates reasonably comparable for such services. Without universal service support to carriers, which allows them to build, maintain, expand, and improve networks and to provide basic and advanced services, consumers in high cost areas would not have basic reliable service, access to advanced services, or any such services at reasonable rates. Similarly, if the ILECs operating in high cost areas do not receive adequate universal service support to build, maintain, expand, and improve their networks, then these carriers that have been relied upon as critical carriers of last resort, will not be able to meet this obligation to be ready and able to serve all consumers requesting service in their service areas.[8]

[7] USTA ETC Designation Comments at 2.

[8] Western Wireless argues that "incumbents and competitive ETCs, like all other companies competing in a capitalist economy . . . should receive revenues *only* to the extent that they manage to persuade consumers to purchase their product." Western Wireless Comments at 11 (emphasis in original). Western Wireless further suggests that the requirement of sufficient support for universal service is confused with a belief that there should be guaranteed economic success for all providers. *See id*. However, if the market worked in high cost areas, there would be no need, or at least very little need, for universal service support. In high cost areas where market economics have not worked to bring services to consumers without support, networks would not have been built. Certainly USTA does not believe that individual carriers' economic success must be guaranteed through the provision of universal service support. To the contrary, universal service is absolutely necessary in high cost areas to ensure that networks are built, maintained, expanded, and improved so that consumers in high cost areas have access to basic and advanced services. Part and parcel of ILECs' receipt of support in high cost areas is their obligation to serve as the carriers of last resort, which obligation requires a network to have been built and maintained so that services can be provided whenever requested.

II. Universal Service Support Provided To CETCs Is A Significant Factor In The Exponential Growth Of The Size Of The Universal Service Fund.

Several commenters – CTIA, Western Wireless, Nextel Partners, and Dobson Cellular – either blame ILECs for the growth in the Universal Service Fund (USF or Fund) or attempt to deflect the role that competitive eligible telecommunications carriers (CETCs) seeking universal service support play in the growth of the Fund.[9] Yet, common sense says that with the growing number of carriers being designated as CETCs, there can be no doubt that these additional carriers seeking universal service support are causing the size of the Fund to grow at an exponential rate, or at least significantly contributing to its exponential growth, threatening the continued viability of the Fund. In fact, in its Recommended Decision regarding ETC designations and primary lines, the Joint Board cited to data from the Universal Service Administrative Company (USAC), demonstrating the exponential growth in universal service support to CETCs in just a few years: "2 competitive ETCs received just over $500,000 in high-cost support in 1999, 4 competitive ETCs received $1.5 million in 2000, 25 competitive ETCs received $17 million in 2001, and 64 competitive ETCs received $47 million in 2002. In 2003, 109 competitive ETCs received approximately $131.5 million in high-cost support. Based on USAC quarterly projections, support for competitive ETCs will increase from $62.9 million in the fourth quarter of 2003, to $111.5 in the second quarter of 2004, an increase of 77%."[10]

[9] *See* CTIA Comments at 3 ("vast majority of growth in the high-cost fund is the result of increased support for incumbent LECs"), Western Wireless Comments at 7-8 ("*CETC funding is not the main cause of fund growth* . . . *ILECs* are the principal cause of fund growth . . . only 12% of . . . fund growth is attributable to CETCs"), Nextel Partners Comments at 8 ("[w]hile wireless carriers have legitimately begun to draw support from the Fund, they are not causing a depletion of the Fund . . . wireless carriers have had an almost diminimus impact on the Fund"), and Dobson Cellular Comments at 3 (from 1999 to 2003, "support to competitive ETCs has grown only 8.4%, and competitive ETCs still collect only 7.1% of the fund.").

[10] *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, fn. 183 (2004) (*citing to* Federal Universal Service Support Mechanisms

It is simply inaccurate to blame ILECs for the out-of-control growth of the Fund or to minimize the role that CETCs play in that growth. Moreover, any perceived increase in universal service support to ILECs is most likely a result of support funded through provisions adopted in the Coalition for Affordable Local and Long Distance Service (CALLS) Plan[11] and the Multi-Association Group (MAG) Plan,[12] both of which caused carriers to reduce interstate access charges. This reduction in access revenue was replaced by increased subscriber line charges (SLCs) for both price cap and rate-of-return carriers and access support -- $650 million in capped access support to price cap carriers and make whole support to rate-of-return carriers through the Interstate Common Line Support mechanism. Importantly, the increased access support to price cap and rate-of-return carriers was revenue neutral; it resulted in no net increase in revenue to ILECs. To the contrary, in most cases when CETCs receive universal service support, they are receiving *additional* money because the CETCs are often already providing service so that receipt of support is virtually a bonus. This bonus is even more drastic in the case of wireless CETCs because they do not charge for access, yet they receive support based on what ILECs receive, which includes access support. In fact, to the extent that wireless carriers pay

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Fund Size Projections and Contribution Base for the Second Quarter 2004, Appendix HC 18-21, Universal Service Administrative Company, Jan. 31, 2004).

[11] *See generally Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (2000).

[12] *See generally Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation and Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket Nos. 98-77 and 98-166, Report and Order, 16 FCC Rcd 19613 (2001).

access for inter-MTA calls, they receive a double benefit, as they benefit from the reduced access rates and they support that was used to reduce those rates.

III. Universal Service Must Provide Support To Carriers For Networks In Order To Benefit Customers.

There is a common theme emphasized by CTIA, Western Wireless, Nextel Communications, and Dobson Cellular that the Telecommunications Act of 1996 (Act) demands sufficient funding for customers, the intended beneficiaries of universal service, not for providers of telecommunications services, which is elaborated upon to stress that universal service reform is primarily about ensuring consumers in high cost areas have access to telecommunications and information services at rates that are reasonably comparable to those in urban areas.[13] This theme is used as support for why the Commission should move carriers serving high cost areas to a forward looking economic cost (FLEC) mechanism for receipt of high cost universal service support. Many of these commenters further rely upon the *Alenco Communications v. FCC* case, which is cited for the court's statement that "[t]he purpose of universal service is to benefit the customer, not the carrier."[14] However, this theme and the reliance on *Alenco* are misplaced. USTA does not dispute, and undoubtedly no other carrier would dispute, that the ultimate purpose of universal service is to benefit customers, specifically by providing low-income consumers and consumers in rural, insular, and high cost areas with access to telecommunications and information services that "are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas" as specified in Section 254(b)(3) of the Act.[15]

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[13] *See generally* CTIA Comments at 20-21, Western Wireless Comments at 3, Nextel Communications Comments at 14, and Dobson Cellular Comments at 2.

[14] *Alenco Communications v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) (*Alenco*).

[15] 47 U.S.C. §254(b)(3).

However, there should be no confusion between the purpose of universal service and the method of implementing it. Section 254(e) establishes the method for ensuring the goals of universal service are met. Specifically, Section 254(e) states that universal service support shall only be provided to eligible telecommunications *carriers* designated as such under Section 214(e).[16] Section 254(e) further states that "[a]ny such support should be explicit and sufficient to achieve the purposes of this section."[17] The method of implementing the goal of universal service is logical. Sufficient support must be provided to carriers so that they can build, maintain, expand, and improve networks over which services can be provided to customers and so that such services can be provided at reasonable rates, all of which benefits consumers of carriers receiving such support.

Finally, the Joint Board should reject Nextel's suggestion that it should conduct a study to consider the possibility of developing a high cost subsidy that would flow directly to consumers.[18] As discussed more fully above, not only does the Act requires that support be provided directly to carriers, but from a purely practical standpoint, it is critical that support be provided to carriers so that they can build, maintain, expand, and improve the networks over which individual services ride. Giving a subsidy to a consumer so that he or she can pick the ETC from which to purchase service is meaningless if there is no provider from which to choose because no carrier can build or maintain a network to provide adequate or even any service because there is no universal service support to facilitate building and maintaining a network. Importantly, networks are not built from one customer location to another. Networks are built to serve all customers in a serving area. Equally important, Nextel's suggestion ignores the carrier

[16] *See* 47 U.S.C. §254(e).

[17] 47 U.S.C. §254(e).

[18] *See* Nextel Communications Comments at iii and 12.

of last resort responsibilities held by ILECs. They are required to stand ready to provide service to all customers in their serving area. This means they must build and maintain networks that are capable of providing such service, but this is difficult and often impossible to do in high cost areas without receipt of universal service support provided directly to the carrier. When an ILEC loses a customer to a competitor, it does not lose the obligation to maintain and upgrade its network because it must comply with its carrier of last resort obligations.

IV. There Is No New Data That Would Support Moving Carriers Serving High Cost Areas To Forward Looking Economic Costs Or That Would Justify A Change In The Definition Of Rural.

There are several different proposals for providing universal service support to carriers serving high cost areas based on forward looking economic costs,[19] but all of these proposals fail to address two important points.

First, the embedded cost methodology used currently to provide universal service support to carriers serving high cost areas represents the real, not inflated, costs of such carriers. Support provided using the embedded cost methodology compensates high cost carriers for money they have actually spent to provide service in areas where market forces have been unable to bring service at reasonable rates. If the Commission adopted a forward looking economic cost methodology, it is unlikely that carriers would consistently be able to recover their costs, given the many differences among carriers serving rural areas and the difficulty of developing a model to accommodate these differences. If carriers are not able to recover their costs, there is no economic incentive to enter the market or to continue to provide service. Contrary to Sprint's claims that the use of forward looking economic costs will send proper signals to potential

[19] *See generally* CTIA Comments, Western Wireless Comments, Nextel Communications Comments, Dobson Cellular Comments, Sprint Comments, and NASUCA Comments.

entrants regarding the cost of entering a market,[20] the use of such a methodology for determining universal service support, particularly for carriers that cannot recover their costs of providing service with a reasonable profit, is more likely to serve as a disincentive to enter or remain in a market.

Second, high cost carriers have a continuing need to be receive universal service support based on their embedded costs because, as USTA elaborated upon in its comments, very little has changed that would cause the Rural Task Force (RTF) to alter its conclusion regarding the FCC's Synthesis Model, which the RTF previously considered as a proposed forward looking cost model upon which to base universal service support to high cost carriers.[21] In fact, USTA noted in its comments that "there are now additional factors that would call into question the validity of the current version and its inputs as a forward-looking cost tool."[22] Finally, USTA's comments previously concluded that even if the Synthesis Model was updated to reflect changes since the model inputs were developed, a determination of whether such an updated model would give predictable and sufficient measures of universal service support could only be made after such an undertaking was completed.[23] USTA maintains that there is no new data that would support moving high cost carriers to a forward looking economic cost methodology for receipt of universal service support. USTA continues to urge the Joint Board to recommend and the Commission to retain the use of the embedded cost methodology for determining support.[24]

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[20] *See* Sprint Comments at 2.

[21] *See* USTA Comments at 9-13.

[22] *Id*. at 10.

[23] *Id*. at 13.

[24] While USTA does not believe there should be any change in the basis of support provided to carriers serving high cost areas, USTA does agree with Sprint that there should be incentives provided to states to rebalance local rates "to cover more of the costs of providing service." Sprint Comments at 7. Local rate rebalancing could certainly help alleviate some of the strain

The Joint Board should also refrain from recommending any change to the definition of rural. Western Wireless argues in its comments that the "definition of who and what is considered 'rural' for universal service purposes should be based on the characteristics of particular *geographic areas* – not on the size, type, or other characteristics of individual carriers."[25] However, there has been no study conducted or data gathered since the efforts of the Rural Task Force, as documented in its White Paper 1: Rural Task Force Mission and Purpose and its White Paper 2: The Rural Difference that would support any change to the definition of rural.[26] In White Paper 1, the Joint Board continued to support the use of the Commission's definition of rural, noting that it "recognize[d] that challenges to a provider's ability to provide universal service and to upgrade it's [sic] network can arise from various conditions"[27] and that it "recognize[d] that not all of the same high-cost factors apply to any individual Rural Carrier."[28] In White Paper 2, the Joint Board highlighted the operational and market distinction of rural carriers and documented the unique circumstances facing them and their customers, all of which further justified the continued use of the definition of rural as adopted by the Commission.[29] Again, there is nothing new that would support changing the definition of rural. Moreover, what Western Wireless is really suggesting is that there should be a model upon which to base universal service support. Yet, it should not be forgotten that in its 2000 report, the Rural Task

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on the universal service system, but rebalancing must be done without harming those ILECs serving high cost areas. Rate rebalancing must have a revenue neutral impact on ILECs and there must be no rate case requirement in order to raise local rates.

[25] Western Wireless Comments at 32 (emphasis in original).

[26] *See generally* Rural Task Force, White Paper 1: Rural Task Force Mission and Purpose, http://www.wutc.wa.gov/rtf (Sept. 1999) (White Paper 1) and Rural Task Force, White Paper 2: The Rural Difference, http://www.wutc.wa.gov/rtf (Jan. 2000) (White Paper 2).

[27] White Paper 1 at 13.

[28] White Paper 1 at 14.

[29] *See* White Paper 2 at 64.

Force rejected the use of a model as the mechanism for determining universal service support, but recommended the use of an embedded cost support mechanism. Finally, USTA agrees with Sprint, which stated in its comments that it "is unable to identify any specific purpose that might be served or goal that might be achieved by adopting a different definition of 'rural' carrier for purposes of determining eligibility for explicit universal service support."[30]

Western Wireless also maintains that a definition of rural based on geographic characteristics "would facilitate adoption of a 'unified' high-cost support system," which "would eliminate the differences that exist today between the disparate funding systems" and "would make it unnecessary to maintain rules like 47 C.F.R. §54.305 [also known as the "parent trap" rule] . . . since support would be based on geography, not the identity of a carrier or its 'parent.'"[31] As stated above, USTA urges the Joint Board to refrain from making any changes to the definition of rural, but USTA also emphasizes, in response to Western Wireless' claims, that the disparate funding systems – one for rural high cost support and one for non-rural high cost support – are appropriate and necessary given the differences between rural and non-rural carriers and the differences among rural carriers, all of which was well documented by the Rural Task Force in its White Paper 2. More specifically, with regard to the "parent trap" rule, USTA continues to urge the Joint Board to recommend the repeal of the rule. There is no evidence that the rule is needed. Conversely, repeal of the rule is vital for ensuring that rural carriers will continue acquiring exchanges that may have been neglected and that such carriers will have sufficient support to make appropriate investments. In the alternative, USTA urges the Joint Board to recommend, at a minimum, that the Commission amend the safety valve mechanism provided for in section 54.305, so that safety valve support is not capped and also so that an

[30] Sprint Comments at 8.

[31] Western Wireless Comments at 33.

acquiring company can receive support for investments made in the first year after acquisition of an exchange.[32]

V. The Universal Service Fund Is Not Duplicative Of The Rural Utility Service Loan Program.

Dobson Cellular suggests in its comments that the Commission "should consider whether the USF is duplicative of the Department of Agriculture's RUS [Rural Utility Service] loan program."[33] Dobson Cellular also claims that the "size of the fund could be reduced by deducting RUS loan disbursement (amortized over the term of the loan) from an ETC's universal service support."[34] This suggestion and claim is wholly without merit. The RUS loan program is already integrated with the support that carriers receive from USF in the sense that the below-market interest rates of RUS loans lowers the costs of the carriers receiving such loans, which is then reflected in these carriers' cost studies, upon which universal service support is ultimately based. Contrary to the suggestion of Dobson Cellular, the RUS loan program is already fully taken into account prior to any determination of universal service support to be provided to a carrier.[35]

VI. Geographic Diversity And Non-Contiguous Study Areas Limit Economies Of Scale, Which Cannot Be Achieved By Study Area Consolidation.

Dobson Cellular maintains that the Joint Board "should consider all of a company's study areas within a state to better reflect the appropriate economies of scale that can be achieved by the carrier."[36] In making this argument, Dobson Cellular fails to give credence to the actual conditions under which most rural carriers operate. What USTA stated in its comments bears

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[32] *See* USTA Comments at 13-15.

[33] Dobson Cellular Comments at 9.

[34] *Id*.

[35] *See id*.

[36] Dobson Cellular Comments at 5.

repeating: "Generally, when a carrier has multiple study areas within a state, the study areas are not geographically contiguous and the operations for providing service in each study area are separate from each other study area in the state. In other words, even though a carrier may have an overall large number of lines in a state, which may make the carrier look more like a non-rural carrier on paper, there really are no, or very limited, economies of scale realized when the lines are spread out in geographically diverse and usually non-contiguous areas of a state and the carrier must operate each of its study areas independently."[37] In fact, Sprint notes, and USTA agrees, that if a "carrier allocates its costs properly, the economies achieved by operating in multiple study areas within a state, or indeed, in multiple states, are properly reflected in the costs assigned to each study area."[38] To the extent the Commission is considering study area consolidation as a means of controlling the size of the Fund, USTA also agrees with Sprint that the arbitrary averaging that would be produced by consolidation is not the most efficient or competitively neutral way to do so.[39] The Joint Board should not recommend consolidation of study areas.

VII. There Are Other Important Issues That Require Attention Now.

AT&T maintains that the Commission should not move forward with any action on the high cost basis of support mechanism in this harmonization docket, but rather should focus on two critical matters currently before the Commission – 1) intercarrier compensation and universal service reform proposals, and 2) the ETC designation proceeding.[40] USTA agrees that these matters are critically important and should be addressed, along with the issues involving

[37] USTA Comments at 8.

[38] Sprint Comments at 5.

[39] *See* Sprint Comments at 6.

[40] *See* AT&T Comments at 1 and 3.

universal service contributions, prior to the Commission taking any action in the current proceeding. While USTA maintains that the current system of support to rural carriers is not broken and does not require any changes, with the exception of a few areas, particularly the support applicable to acquired exchanges, USTA does agree with AT&T that Commission action on intercarrier compensation and ETC designations would circumscribe any consideration of high cost support mechanisms that the Commission deems necessary.

CONCLUSION

USTA urges the Joint Board to recommend against any change to the definition of a rural telephone company; to recommend against consolidation of study areas; and to recommend against the adoption of forward looking economic costs. However, USTA urges the Joint Board to recommend in favor of repeal, or at a minimum revision, of the "parent trap" rule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on December 14, 2004, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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